

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.9614 OF 2005

DISPOSED OF ON 26-12-2005

BETWEEN:

M.VENKAT REDDY ... PETITIONER

AND

THE SPECIAL DEPUTY COLLECTOR(LA)

TELUGU GANGA PROJECT,

NELLORE AND OTHERS ... RESPONDENTS

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ORDER :

1. This Writ Petition has been filed by the petitioner praying to issue a Writ of Mandamus declaring the action of the respondents in not paying the enhanced compensation as illegal and arbitrary.

2. The petitioner is the owner of Ac.3.25 cents in s.No.6 of Lingapallem Village, Rapur Mandal, Nellore District. His land came to be acquired for Telugu Ganga Project under the provisions of Land Acquisition Act. An award No.95/87 came to be passed fixing the compensation. On a reference to the Civil Court, compensation to the land came to be enhanced from Rs.5,000/- to Rs.7,000/- per acre and for eucalyptus trees from Rs.400/- to Rs.500/- per metric tonne. The petitioner preferred an appeal being A.S.No.1490 of 1998 in this court. In the appeal compensation for eucalyptus trees came to be enhanced by Rs.100/-. The respondents carried the matter in an appeal before the Supreme Court and the Supreme Court remanded the matter back to this Court with certain conditions. The order of the Supreme Court in Civil Appeal No.7447 of 2003 reads as under:

“ The impugned decision of the High Court is accordingly set aside. The matter is remanded to the High Court for disposal of the appeal of the respondent afresh in accordance with law. However, as a pre-condition to this order the appellant shall deposit 25% of the disputed amount with the High Court within a period of 8 weeks from today. In default of making such deposit 25% of the enhanced amount with the High court within a period of 8 weeks, this order will stand recalled and the appeal will stand dismissed. In the event such deposit is made the High court may pass suitable orders for investment of the amount or withdrawal of the amount subject to such terms and conditions, as it may think fit.

The appeal is allowed accordingly. No costs.”

3. The respondents filed counter affidavit stating that the time allowed for depositing 25 % of the amount has been expired and an application seeking extension of time is moved which is pending.

4. Heard learned counsel for the petitioner and learned Standing Counsel for the

respondents.

5. Learned counsel appearing for the petitioner submits that the writ petition is maintainable for implementation of the award passed by the Civil Court in view of the larger bench decision of this court passed in W.P.No.14939 of 2004 (Bhimidipati Annapoorna Bhavani v. The Land Acquisition Officer, Yeleru Reservoir Project, Peddapuram, E.G. District) wherein it has been held as follows:

“ The above discussion would lead us to hold that the power, which the High Court exercises under Article 226 of the Constitution, is a discretionary power. Though the power is discretionary and no limits can be placed upon such discretion, it has been held judicially that power must be exercised along recognized lines and not arbitrarily. There are no limits to such power and has to be exercised judiciously. However, while exercising this power courts have imposed certain limits in exercise of those powers, which are known as self-imposed limitations. One of the self imposed restrictions is that High court generally refrains from entertaining a writ petition when there is adequate and efficacious alternate remedy available to a party, and, when such alternate remedy available is a statutory remedy, such statutory remedy has been duly exhausted. Availability of such alternate and efficacious or statutory remedy itself is not a bar in entertaining a writ petition in the given facts and circumstances. We need not multiply the circumstances in which such discretionary power may be exercised by the Court in such matters despite availability of such alternate, adequate and efficacious remedy. But the limits as noticed in B.Govinda Reddy's case supra by a learned single Judge of this Court are sufficient that in cases arising out of the Act where the amount of compensation, finally determined has not been paid, a person must first resort to the alternate efficacious remedy of taking out execution and when despite taking out execution proceedings, if there is any delay caused on the part of authorities, resort can be had to filing of a writ petition in this Court and, this Court, while exercising its discretionary jurisdiction, in appropriate cases, may issue directions for immediate deposit of the amount of compensation by the State Government or the authorities on whose behalf the land has been acquired.

In view of the above, we hold that the view taken by the Full Bench in Vemula Prabhakar's case that in a matter arising out of the Act, writ petition under Article 226 of the Constitution seeking direction against the State to deposit the amount of compensation determined which has finally been settled will not be maintainable is bad and contrary to the principles of law as noticed hereinabove and accordingly we overrule the same and hold that the view taken by the learned single Judge in B.Govinda Reddy's case is the correct exposition of law.

The reference is answered accordingly.”

6. The facts of the case are not in dispute. The land of the petitioner came to be acquired about 22 years ago and enhanced compensation has not been paid. His effort to get the enhanced amount recovered by levying the execution application proved to be futile and thus he approached this Court invoking extra ordinary jurisdiction under Art.226 of the Constitution. The respondents' application seeking extension of time is pending and the same is stated to be coming up for consideration on 3.4.2006. In that view of the matter, this Writ Petition is disposed of directing the respondents to deposit the amount within six months from today. However, this order will be subject to the orders to be passed by the Supreme Court in the application moved by the respondents for extension of time.

Dt: 26-12-2005. (B.Seshasayana Reddy,J)

Tnb

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